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15 SHAKEY'S PIZZA ASIA VENTURES, INC. and
16 Third Party Defendants CINCO CORPORATION,
17 PC INTERNATIONAL PTE LTD., and SPAVI
18 INTERNATIONAL USA, INC.
19

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22

23 SHAKEY'S PIZZA ASIA VENTURES,
24 INC, a Philippines corporation,

25 Plaintiff,

26 vs.

27 PCJV USA, LLC, a Delaware limited
28 liability company; PCI TRADING , LLC, a
Delaware limited liability company; GUY
KOREN, an individual; POTATO CORNER
LA GROUP, LLC, a California limited
liability company; NKM CAPITAL GROUP,
LLC, a California limited liability company;
J & K AMERICANA, LLC, a California
limited liability company; J&K
LAKEWOOD, LLC, a California limited
liability company; J&K VALLEY FAIR,
LLC, a California limited liability company;

Case No. 2:24-CV-04546-SB(AGRx)

Hon. Stanley Blumenfeld, Jr.

**PLAINTIFF AND
COUNTERCLAIM DEFENDANT
AND THIRD-PARTY
DEFENDANTS' PROFFER OF
PROOF AS TO WAIVER AND
ASSIGNMENT IN GROSS
DEFENSES**

Complaint Filed: May 31, 2024
Trial Date: August 18, 2025

1 J & K ONTARIO, LLC, a California limited
2 liability company; HLK MILPITAS, LLC, a
3 California, limited liability company; GK
4 CERRITOS, LLC, a California, limited
5 liability company; J&K PC TRUCKS, LLC,
6 a California limited liability company; and,
7 GK CAPITAL GROUP, LLC, a California
8 limited liability company and DOES 1
9 through 100, inclusive,

10 Defendants.

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12 PCJV USA, LLC, a Delaware limited
13 liability company; PCI TRADING LLC, a
14 Delaware limited liability company;
15 POTATO CORNER LA GROUP LLC, a
16 California limited liability company; GK
17 CAPITAL GROUP, LLC, a California
18 limited liability company; NKM CAPITAL
19 GROUP LLC, a California limited liability
20 company; and GUY KOREN, an individual,

21 Counter-Claimants,

22 v.

23 SHAKEY'S PIZZA ASIA VENTURES,
24 INC, a Philippines corporation,

25 Counter Defendant.

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27 PCJV USA, LLC, a Delaware limited
28 liability company; PCI TRADING LLC, a
Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
California limited liability company; GK
CAPITAL GROUP, LLC, a California
limited liability company; NKM CAPITAL

1 GROUP LLC, a California limited liability
2 company; and GUY KOREN, an individual,

3
4 Third Party Plaintiff,

5 v.

6 PC INTERNATIONAL PTE LTD., a
7 Singapore business entity; SPAVI
8 INTERNATIONAL USA, INC., a California
9 corporation; CINCO CORPORATION, a
10 Philippines corporation; and ROES 1 through
11 10, inclusive,

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28 Third Party Defendants.

1 **PROFFER OF PROOF**

2 **I. INTRODUCTION**

3 Pursuant to this Court’s Order on August 15, 2025, Plaintiff and
4 Counterclaim Defendant Shakey’s Pizza Asia Ventures, Inc. (“SPAVI”), and Third
5 Party Defendants Cinco Corporation, SPAVI International USA Inc., and PC
6 International PTE Ltd. (“Third Party Defendants,” and, collectively “Plaintiff and
7 Third Party Defendants”), submit this Proffer of Proof in advance of trial, with
8 respect to the waiver and assignment in gross defenses.

9 This proffer is submitted to inform the Court of the evidence the Plaintiff and
10 Third-Party Defendants expect to introduce and the testimony they expect to elicit
11 from its witnesses in support of their waiver defense. Separately, as the Court also
12 appears to have inquired as to Plaintiff and Third-Party Defendants’ proffer as to
13 Defendants’ assignment in gross and waiver defenses, Plaintiff and Third-Party
14 Defendants also provide their best good faith proffer as to the evidence that will
15 refute those defenses.

16 **II. PLAINTIFF AND THIRD-PARTY DEFENDANTS’ PROFFER OF**
17 **PROOF AS TO THEIR WAIVER DEFENSE**

18 **A. Summary of Defense and Legal Authority**

19 A central factual defense of Defendants to each of Plaintiffs’ claims arises
20 from an assertion that, although not documented in any signed or written agreement,
21 Cinco had conferred upon Defendant PCJV USA, LLC an irrevocable, permanent,
22 perpetual, and royalty free license to use all of the intellectual property representing
23 the Potato Corner brand (“Defendants’ Claimed Right”).

24 In response Plaintiff and Third-Party Defendants offer a defense of waiver.
25 The elements of waiver in this context are as follows: (1) that Defendants claimed a
26 right about which they had actual knowledge; (2) Defendants’ relinquishment of
27 that right, that is either (a) expressed and/or based on their words, or (b) implied
28 based on conduct inconsistent with an intent to enforce that right. *hiQ Labs, Inc. v.*

1 *LinkedIn Corp.*, 639 F. Supp. 3d 944, 962-63 (N.D. Cal. 2022). If, for example,
2 Defendants' actions "are so inconsistent with an intent to enforce the right as to
3 induce a reasonable belief [by the Plaintiff and/or Third-Party Defendants] that such
4 right has been relinquished." *Id.*

5 It should be noted that this defense is not offered as a separate waiver of the
6 intent to disprove that Defendants' Claimed Right existed. To the contrary, the
7 evidence will establish the opposite: none of the Defendants ever enjoyed such a
8 right. This defense would first require Defendants to prove the existence of that
9 right.

10 **B. Summary of Expected Testimony**

- 11 1. Joseph P. Magsaysay, Jr.: he is expected to testify as to the
12 history of the license, including the sources from Defendants'
13 Claimed Right purportedly arise. His testimony will refute that
14 such right exists, by providing testimony about how the parties
15 behaved before this dispute ever came about (including, for
16 example, that there has been a demand for a written license
17 agreement for over a decade, all parties, including Guy Koren
18 assented to this requirement, and that at no point did any of the
19 Defendants, including Mr. Koren, ever state that there was no
20 need for a written license agreement since the AJVA conferred an
21 irrevocable, permanent, perpetual, and royalty free license to use
22 all of the intellectual property representing the Potato Corner
23 brand. Mr. Magsaysay will also testify that, had any of the
24 Defendants asserted such a right before settling the prior action,
25 they would not have settled that action. He will offer other points
26 in time that Cinco would have taken different action including,
27 for example, the sale of the brand to SPAVI.
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2. Myrose Victor: she is expected to testify as to the statements and actions of Defendants between 2018 and 2021 regarding the license, including the sources from Defendants' Claimed Right purportedly arise. Her testimony will refute that such right exists, by providing testimony about how the parties behaved before this dispute ever came about. Ms. Victor will also testify that, had any of the Defendants asserted such a right prior to 2021, for example, Cinco would have included this as a declaratory relief in the prior action. She will also offer how this information would have changed SPAVI's acquisition of the brand, and how SPAVI would have approached the United States issues arising from this purported right.
3. Vicente Gregorio: he, as CEO of SPAVI is expected to testify as to the words and acts of Defendants during the negotiation of a written license agreement with Guy Koren immediately preceding this action so as to not only defeat the existence of the right, but also to establish the waiver.
4. Yuiopw Leong Tan: he, as a Director of SPAVI responsible for international franchising and licensing is also expected to testify as to the words and acts of Defendants during the negotiation of a written license agreement with Guy Koren immediately preceding this action so as to not only defeat the existence of the right, but also to establish the waiver.
5. Guy Koren: he, of course, will be confronted with the absence of any evidence of Defendants' Claimed Right as well as his having concealed the belief as to the existence of Defendants' Claimed Right at key moments over the last decade that caused Plaintiff

1 and Third Party Defendants to take action that they would not
2 have otherwise.

3 **C. Summary of Expected Documentary / Physical Evidence**

- 4 1. Purported Documents from which Defendants' Claimed Right
5 arises. These documents will evidence the absence of any such
6 right.
- 7 2. Email correspondence from Guy Koren over the last decade:
8 these will establish that he did not believe any such right exists,
9 and moreover, that he acted and spoke in such a manner to evince
10 a belief that no such right exists and he needs to get a written
11 license in place.
- 12 3. Email correspondence from Plaintiff and Third-Party Defendants
13 over the last decade (collectively): evidencing that they had no
14 idea that Defendants possessed such a belief, and evidencing the
15 actions that they took that relief upon the absence of any such
16 right. For example, the proposals made over time that premised
17 no such right existed.
- 18 4. Defendants' proposals over the last 13 years involving the rights
19 to the IP: each one of these presumes that Defendants; Claimed
20 Right does not exist.

21 **D. Summary of Expected Objections or Rebuttal Evidence**

22 Other than the objections to evidence already presented, Plaintiff and Third-
23 Party Defendants are not aware of any other objections. Their rebuttal evidence will
24 attempt to inject inadmissible statements or inadmissible beliefs unstated

25 **E. Reservation of Rights**

26 This proffer is a summary made in good faith and does not constitute a full
27 recitation of all facts, testimony, or exhibits the Plaintiff and Thid Party Defendants
28 may present, and thus they reserve the right to supplement or amend this proffer

1 based on what transpires at trial.

2 **III. PLAINTIFF AND THIRD-PARTY DEFENDANTS' PROFFER OF**
3 **PROOF AS TO THE ABSENCE OF EVIDENCE ON DEFENDANTS'**
4 **ASSIGNMENT IN GROSS AND WAIVER DEFENSE**

5 First, Defendants' assignment in gross defense will fail because of the
6 existence of a (1) deed transferring the goodwill to SPAVI from Cinco and the
7 testimony of both Cinco and SPAVI agreeing that goodwill was transferred and (2)
8 testimony and evidence from Vicente Gregorio and Jorge Concepcion regarding the
9 plans by SPAVI to use the goodwill and expand upon it and capitalize on it for the
10 benefit of the owner of the marks.

11 Second, it is unclear what right of SPAVI or Cinco is purported to have been
12 waived. As such, it is difficult to predict what evidence will be necessary.

13 DATED: August 14, 2025

/s/ Michael D. Murphy

Michael D. Murphy

Matthew Follett

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Attorneys for Plaintiff and Counterclaim
Defendant, and Third Party Defendants